



**DEPARTMENT OF JUSTICE**  
Antitrust Division

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Joseph M. Sullivan, Esq.  
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Seattle, Washington 98104-4082

Dear Mr. Sullivan:

This is in response to your request on behalf of the Pollock Conservation Cooperative ("PCC") and its members<sup>1</sup> for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposed joint harvesting agreement in which PCC's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BI/AI") Alaskan Pollock allotted to the members as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder.

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<sup>1</sup> PCC's members are Alaska Ocean Seafood, L.P., a Washington Limited partnership, Alaska Trawl Fisheries, Inc., a Washington corporation, American Seafoods Company, a Washington corporation, Arctic Fjord, Inc., a Washington corporation, Arctic Storm, Inc., a Washington company, Glacier Fish Company LLC, a Washington limited liability company, Highland Light Seafoods, LLC, a Washington limited liability company, Starbound Ltd. Partnership, a Washington limited partnership, and Tyson Foods, Inc., a Delaware corporation.

The United States Government, for environmental and economic reasons, has determined to limit the amount of certain species of fish that may be harvested from United States waters in a given year. This conservation policy is administered by the Department of Commerce in a program that has substantial private industry participation. An annual harvest quota has been established for Alaskan Pollock caught in the Bering Sea/Aleutian Islands waters (“BS/AI”). In addition to determining the maximum amount of BS/AI Alaskan Pollock that may be harvested, the regulatory program divides the total quota between three groups. Effective January 1, 1999, the American Fisheries Act allocates 10% of the total quota to Community Development Quota Groups.<sup>2</sup> The remaining ninety percent is divided between “Mothership” processors (ships that have on-board processing capabilities but do not catch the fish) (ten percent), vessels that catch and process their own fish on-board (“catcher/processors” or “C/Ps”), (forty percent), and for on-shore processing plants (fifty percent). Prior to the AFA, the allocation was 65 percent offshore and 35 percent onshore. Entry into the Alaskan Pollock fishery is limited. Licenses were issued to qualifying vessels at a prior qualifying date and are transferable.

Under the regulatory plan, the entire sub-allocation of each group of processors may be harvested by each licensed participant. This is referred to as an “olympic” system because it provides each individual processor with the incentive to harvest as much as possible of its sector’s total allotment as fast as it can (any amount not harvested by one member of the group will be lost to other members of the group).

PCC and its members assert that their proposal to sub-allocate the quota for catcher/processors amongst all the licensed C/Ps will allow them to avoid the inefficiencies encouraged by the “olympic” system. By removing the urgency from their harvesting, the C/Ps claim that they will be able to increase the efficiency of their on-vessel processing (they assert a potential 26% productivity increase from reduced costs and increased yield of finished product from the fish caught), and reduce the amount of incidental by-catch of other fish species that the Government seeks to protect.

Pollock is used to produce a number of different products. Historically, the largest volume product has been “surimi”, a protein paste made by repeatedly macerating and washing the flesh of the fish to remove all water soluble fats and other impurities, and then blending in certain cryoprotectant compounds such as sorbitol. Pollock is also used to produce fillet products of two types: “deep

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<sup>2</sup> The “CDQ” Groups are Western Alaskan Native villages that receive an allocation as part of an economic development program.

skinned”, which is a fillet with both the outer skin and the immediately adjacent fat layer removed, and the standard fillet, which has only the outer skin removed.

In 1997, approximately 4 million metric tons of Alaskan Pollock was harvested on a worldwide basis. United States Alaskan Pollock production is primarily distributed into the Southeast Asian market (the vast majority as surimi), and secondarily distributed into the United States, half fillets and half surimi. Russian Alaskan Pollock production is primarily distributed into Russia and Asia with a relatively small amount being distributed into the United States as fillets. Chinese, Japanese and Polish Alaskan Pollock production is primarily distributed into the Asian market, secondarily into Europe, and includes a relatively small amount of fillets for United States consumption.

PCC’s members are all vertically integrated fishing companies that harvest, process and market their fishery products. The Members own or operate under bareboat charter all of the eligible catcher/processor boats named in the AFA. The proposed Agreement affects only harvesting activity; it allocates the fixed annual catcher-processor quota among all the members of that group. The proposed collective activity does not extend to processing, marketing or sales of any of the Members’ production, nor does it extend to their purchases of fish from others. Rather, the Agreement specifically prohibits any collective activity (including, but not limited to discussions, actions and exchanges of information, other than as appropriate in connection with the fishery management process, and among members of an export trading company) with respect to their purchasing, processing, marketing and sales of any fishery products.

The Agreement further provides that all purchases of quota from catcher vessels shall be conducted by Cooperative Members on an individual, fully competitive basis, and not through the Cooperative. In addition, the Agreement provides that while the Members will report the amounts of their individual catcher vessel purchases to a catch monitoring service (to ensure the overall catcher/processor allocation is not exceeded), aggregate catcher vessel purchase amounts will not be reported to individual Members, other than Members being informed when minimum threshold is reached, to prevent overharvest of the catcher/processor sector allocation.

The PCC suggests that the AFA allocation change favoring on-shore processors -- giving them 50% rather than 35% of the quota -- is likely to increase the amount of Alaskan Pollock that is shipped to Asia in the form of surimi and thereby decrease the amount of fillet available to United States consumers and increase the price thereof. While such price increases might attract new entry in normal

circumstances, PCC notes that the AFA has foreclosed that possibility until December 31, 2004 by restricting eligibility to those processors that were in operation during 1996 and 1997, unless the BS/AI pollock quota increases to a level more than 10% above the 1997 quota, or unless there is a loss or total constructive loss of an existing eligible shoreside processor. It argues that its members could mitigate the anticipated reduction in fillet availability in the United States by increasing their productivity by 26% as a result of eliminating the wasteful results caused by the olympic system.

On the basis of the information and assurances that you have provided to us, it does not appear that the proposed elimination of the olympic system race to gather the governmentally-fixed quota of Alaskan Pollock would have any incremental anticompetitive effect in the regulated output setting in which the harvesting agreement would take place. The Department of Justice has previously concluded that reliance on an olympic race system to gather a fixed quota of fish “is both inefficient and wasteful” because it is likely to generate “inefficient overinvestment in fishing and processing capacity.”<sup>3</sup> From a consumer perspective, the harvesting agreement does not reduce the output of processed Alaskan Pollock or the end products into which it is incorporated -- e.g., surimi. On the contrary, if the Applicant’s assertion that “haste makes waste” is true, then eliminating the race will increase processing efficiency and concomitantly the output of Alaskan Pollock products. Since the prices paid for Alaskan Pollock products by consumers will be determined by the intersection of supply and demand for those products, elimination of the race to gather an input whose output is fixed by regulation seems unlikely to reduce output or increase price under any likely scenario.

To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against the proposed harvesting agreement. This letter, however, expresses the Department’s current enforcement intention. In accordance with our normal practices, the Department reserves the right, in appropriate circumstances, to bring any enforcement action in the future if the actual operation

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<sup>3</sup> Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1315, January 30, 1992 (involving Alaskan Pollock). On May 20, 1997 the Department of Justice issued an affirmative Business Review Letter to counsel for the Whiting Conservation Cooperative with respect to its proposal to allocate amongst its members the total quota of Pacific Whiting allocated to the group by the United States Government.

of the proposed agreement proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

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Joel I. Klein  
Assistant Attorney General